

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Europe on 7/4/2003. It is noted, however, that applicant has not filed a certified copy of the Europe Application # 030151584.9 as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. **Claims 1-4, and 6-8, are rejected under 35 U.S.C. 103(a) as being unpatentable over Tindall, J.M., U.S. Pat. # 3,083,107 in view of Paek, Y.L., U.S.Pat. # 4,266,668.**

5. Tindall discloses:

- a. Slidable tray . . . marketing and storing sliced food products such as sliced cheese, meat, etc. (lines 7-11, col. 1, '107)

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- b. Sliced food products may be readily removed without destroying or mutilating the outer wrapper (lines 16-18, col. 1, '107)
 - c. Tray provides flat surface of supporting the contents of package, (lines 46-37, col. 1, '107)
 - d. Wrapper is formed of a transparent plastic film which is substantially odorless and which is relative impermeable to moisture vapor and oxygen., (lines 36-38, col.2, '107)
 - e. Other materials . . . polyethylene having vinylidene chloride coating and compounded with waxes . . . used, (lines 44-46, col. 2, '107)
 - f. Wrapper is elongated tubular form and completely encloses tray and its contents. The ends of the tube are heat sealed, (lines 49-51, col. 2, '107)
 - g. To open the package the consumer simply cuts the wrapper along the seal adjacent the pull tab of the tray, and then, by unfolding and pulling tab, slides the tray out of the wrapper a sufficient distance to fully expose one or more of the food slices, (lines 59-63, col. 2, '107)
 - h. The tray may be slid back into the wrapper and the opened end of the wrapper may be folded and temporarily sealed by any suitable means, (lines 63-66, col. 2, '107)
6. Paek discloses;
- i. Telescoping tray for dispensing food items, (abstract, '668)
 - j. Tray is two piece telescoping receptacle where the first piece is a tray with lateral grooves therein ... and the second piece is retractable into the grooves of the first piece by lateral edges or ridges , (lines 51-54, col. 1, '668)

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- k. Insertion of the second tray (6) having projections (28) thereon into grooves (18) having keepers (30) at the leading end thereof for securing tray (6) in tray (4), (lines 42-44, col. 2, Fig. 2, '668)
 - l. Dispensing tray have first top means of grooves in open end and second stop means of upper edges for limiting the range of telescoping of first and second tray portions, (lines 59-62, col. 3, '668)
7. Regarding claim 1, Tindall discloses a bag made of plastic film, (lines 36-38, col.2, '107) with a seam, enclosing a sliding tray, (lines 49-51, col. 2, '107) holding a food item, (lines 16-18, col. 1, '107) and opening means, (lines 59-63, col. 2, '107) but lack taking the tray from the bag only to a certain extent. Paek teaches a telescoping tray (abstract, '668) with a limited transversal action (lines 51-54, col. 1, '668) and a stop means. (lines 59-62, col. 3, '668) Wherein the stop means are upwardly projecting tabs 28, which ride in grooves 18, with keepers 30 mounted at the end of tray 4 to limit the withdrawal of tray 6. (Fig.2, lines 42-44, col. 2, '668)
8. Claim 1 contains the phrase “means (6, 52, 53) being provided for the possibility to open said package (1) at a predetermined position of the package (1)” The phrase approximates a "means for" functional element, as per 35 USC §112 6th paragraph and thus warrants analysis as to whether means plus function is intended. MPEP 2181
9. As per the three prong analysis for 35 USC §112 6th paragraph:
- m. the claim must use “means for”,
 - n. the “means for” must be modified by functional language
 - o. the “means for” must not be modified by sufficient structure material or acts for achieving the specified function.

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10. The instant claim fails in not using the correct form "means for", but passes the second prong, in that the claim uses functional language to describe the desired action, but fails the third prong, the inclusion of sufficient structure material or acts for achieving the specified function. The inclusion of (6, 52, 53) reference numbers to the drawings detailing the seam 6, which closes the package prior to first opening, cut 52, which is opened when the label 53 is pulled. These three elements are the critical and necessary parts of the opening means. The applicant's inclusion of these elements encapsulates the opening means. Therefore the applicant's use of 35 USC §112 6th paragraph fails. The claim will be examined as to the language therein.

11. Claim 1 also contains the phrase "means (5, 52, 31) to partially unbag said tray (3) from said package (1) only up to a predetermined maximum extent." The phrase approximates a "means for" functional element, as per 35 USC §112 6th paragraph and thus warrants analysis as to whether means plus function is intended. MPEP 2181

12. As per the three prong analysis for 35 USC §112 6th paragraph:

- p. the claim must use "means for",
- q. the "means for" must be modified by functional language
- r. the "means for" must not be modified by sufficient structure material or acts for achieving the specified function.

13. The instant claim fails in not using the correct form "means for", but passes the second prong, in that the claim uses functional language to describe the desired action, but fails the third prong, the inclusion of sufficient structure material or acts for achieving the specified function. The inclusion of (5, 52, 31) reference numbers to the drawings detailing the indentations 5, which narrow the package opening, cut 52, which forms the opening, and special end portions

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31, which prevent the tray from being completely withdrawn from the package. These three elements are the critical and necessary parts of the means to limit the tray motion. The applicant's inclusions of these elements encapsulate the stop means. Therefore the applicant's use of 35 USC §112 6th paragraph fails. The claim will be examined as to the language therein.

14. Tindall and Paek are analogous art in that both are concerned with the use and delivery of comestibles for human consumption.

15. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the food holding tray and bag of Tindall, by incorporating the telescoping action of Paek's tray with the stop means thereof in order to provide a resealable food package with a sliding tray that does not extend completely from the package. A package that provides a convenient food dispensing, display and storage container that would be easy to use, economical to construct and provide a safe food environment.

16. Regarding claims 2, 3, 4, 6, 7, and 8, Tindal and Paek disclose the claimed invention, as discussed above, including, tray carries packaged good such as food items(cheese), (lines 7-11, col. 1, '107) the food is unbagged along with the tray, (lines 16-18, col. 1, '107) up to predetermined maximum extent, (lines 59-62, col. 3, '668) the stop means (lines 42-44, col. 2, Fig. 2, '668) are dents, dents are the special end portions on the tray element 31 Fig. 4, (applicant's specification) may be regarded as end tabs extending outward from the tray 3, and are very similar in design and function to the projections 28 on the tray 6 of Paek (lines 42-44, col. 2, 668) and the plastic film is a multilayer film. (lines 44-46, col. 2, '107)

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17. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tindall, J.M., U.S. Pat. # 3,083,107 in view of Paek, Y.L., U.S.Pat. # 4,266,668 and further in view of Beckett, D.E, U.S. Pat # 4,572,377.

18. Tindall and Paek are taken as listed before;

19. Becket discloses:

s. a slit is formed through one side of an enclosed package to provide an opening to the packages (lines 13-14, col.1, '377)

t. a strip of flexible polymer film is adhered adjacent to the slit . . . on the opposite is a narrow strip of pressures sensitive adhesive to releasably engage the film, thus re-sealing the package. (lines 15-28, col. 1, '377)

u. the tear strip may take any convenient form which enables the function of the permanent seal to be inactivated and access to the package to be obtained through the peelable seal, (lines 63-66, col.2, '377)

20. Regarding claim 5, Tindall and Paek disclose the claimed invention, as discussed before, including contemplating the reclosure of the package, (lines 63-66, col. 2, '107) but lack a means to reseal the package. Becket teaches using a tear strip to open the package, (lines 63-66, col. 2, '377) and a polymeric flap with a pressure sensitive adhesive to reseal the package. (lines 15-28, col.1, '377)

21. Tindall, Paek, and Becket are all analogous art in that all are concerned with packaging techniques for comestibles for human consumption.

22. It would had been obvious to one of ordinary skill in the art at the time of the invention to use the tear strip and reclosable seal of Becket in combination with the sliding tray with stop of

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Paek and plastic bag and tray of Tindall, in order to fashion a convenient, safe, enclosure and tray system for the dispensing, sale and display of food items in a safe and appealing manner.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jwa

/KEITH D. HENDRICKS/

Supervisory Patent Examiner, Art Unit 1794